

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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3 ADVOCATES FOR RESPONSIBLE
4 DEVELOPMENT, JOHN E. DIEHL, individually
5 and as a member of ADVOCATES FOR
6 RESPONSIBLE DEVELOPMENT,

7 Petitioners,

8
9 v.

10 MASON COUNTY,

11
12 Respondent.

CASE NO. 05-2-0003

AMENDED ORDER DISMISSING
ISSUES IN PETITION FOR REVIEW
FOR FAILURE TO MEET FILING
REQUIREMENTS

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15 This amendment to the Order Dismissing Petition for Review (entered February 22, 2005) is filed by
16 the Board upon its own motion, to reflect that the dismissal entered only affects those claims that
17 relate to Mason County Ordinance 106-04. This petition for review challenging some features of
18 Mason County's resource ordinance and comprehensive land use plan was filed with the Board by
19 facsimile and stamped received on January 25, 2005. One of the challenged legislative enactments in
20 this Petition for Review is Mason County Ordinance 106-04. According to the Petition for Review,
21 notice of the adoption of Mason County Ordinance 106-04, amending the county's resource
22 ordinance, was published by Mason County on November 25, 2004.¹
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26 The Board issued a Notice of Hearing and Preliminary Schedule for this case on February 4, 2005. It
27 was signed by Presiding Officer, Gayle Rothrock. Upon receipt of the Notice of Hearing, Petitioner
28 Diehl contacted the Board to correct the date of filing. He advised the Board that filing on
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31 ¹ The petition for review also challenges Ordinance 128-04, adopted December 14, 2004 and Ordinance 133-04, adopted
32 December 28, 2004. The January 25, 2005 filing date was timely as to those challenges. In addition, the petition for
review alleges failure to act and those challenges, which are addressed to a failure to enact legislation rather than to
particular legislative enactments, are timely as well.

1 January 25, 2005 would be beyond the statutory deadline and that he had sent his petition for review
2 to the Board by facsimile on January 24, 2005.

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4 The Board's records reflect that the petition was filed on January 25, 2005. See attached Declaration
5 of Patricia Davis, Executive Assistant to the Board. The Board's rules require that a petition for
6 review filed by facsimile must be *received* by the Board by 5:00 pm or the date of service will be the
7 following day:
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9 Filing of any documents with a board by electronic telefacsimile transmission is at the risk of
10 the sender and shall not be deemed complete unless the following procedures are strictly
11 observed:

12 (a) A facsimile document will only be stamped "received" by the board between the hours of
13 8:00 am and 5:00 pm excluding Saturdays, Sundays and legal holidays. Any transmission
14 not completed before 5:00 pm will be stamped received on the following business day.
The date and time indicated by the board's facsimile machine shall be presumptive
evidence of the date and time of receipt of transmission.

15 WAC 242-02-240(2)(a)

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17 The statute provides that "All petitions relating to whether or not an adopted comprehensive plan,
18 development regulation, or permanent amendment thereto, is in compliance with the goals and
19 requirements of this chapter or chapter [90.58](#) or [43.21C](#) RCW must be filed within sixty days after
20 publication by the legislative bodies of the county or city." RCW 36.70A.290(2). In this case, the
21 petition for review was filed sixty-one days after the date of publication of Ordinance 106-04.
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23 The Presiding Officer sent a letter to petitioner Diehl, dated February 11, 2005, notifying him the
24 Board could not continue processing the case if it was not timely filed. WAC 242-02-220, 240, and
25 522 and RCW 36.70A.290(3). The Declaration of Patricia Davis, Executive Assistant to the Western
26 Washington Growth Management Hearings Board, was attached. A copy of the letter and attachment
27 was sent to the Mason County Prosecuting Attorney. No evidence has been provided to the Board to
28 indicate that the petition for review in this case was in fact timely filed as to Ordinance 106-04.
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ORDER

Since the petition for review was not timely filed as to Ordinance 106-04, the challenges to that ordinance are hereby DISMISSED. The rescheduled prehearing conference will be March 1, 2005.

Done this 24th day of February 2005.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Gayle Rothrock, Board Member

Holly Gadbaw, Board Member

Margery Hite, Board Member